

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RUSSELL DICKERSON III,

Plaintiff,

v.

ABERDEEN SCHOOL DISTRICT NO. 5,

Defendant.

No. 3:10-cv-5886

COMPLAINT

I. INTRODUCTION

1. For six years, from 2003 when he entered junior high until 2009 when he graduated from high school, Plaintiff Russell Dickerson III was subjected to severe and pervasive harassment on the basis of his race, sex, and perceived sexual orientation by other students in the Aberdeen School District. Administrators and others in the Aberdeen School District were aware of the harassment and had the duty and authority to institute corrective measures, but they unreasonably and deliberately failed to take steps reasonably calculated to end it. As a result of Defendant's unreasonable and deliberate indifference to the harassment, Plaintiff was deprived of educational opportunities and has suffered severe psychological harm.

1 2. Plaintiff Russell Dickerson III brings this action seeking monetary damages
2 from Defendant. Plaintiff seeks damages to compensate him for the harm that is a direct and
3 proximate result of the Defendant's unreasonable and deliberate indifference to the severe and
4 pervasive harassment.
5

6 **II. PARTIES, JURISDICTION, AND VENUE**

7 3. Plaintiff Russell Dickerson III, a nineteen-year-old African American man, is,
8 and at all pertinent times was, a resident of Aberdeen, Washington.
9

10 4. Plaintiff was a student in the Aberdeen School District. Plaintiff attended
11 Miller Junior High School from September 2003 through June 2005, and Aberdeen High
12 School from September 2005 until his graduation in June 2009. Both schools are within the
13 Aberdeen School District.
14

15 5. Defendant Aberdeen School District No. 5 (the "School District") is a school
16 district located in Grays Harbor County, Washington. Pursuant to R.C.W. 28A.320.010, the
17 School District is a corporate body that possesses all the usual powers of a public corporation
18 and may sue and be sued and transact all business necessary for maintaining and protecting
19 the rights of the School District. The School District controls and operates Aberdeen High
20 School and Miller Junior High School.
21

22 6. The School District receives federal financial assistance from the United States
23 Department of Education. Consequently, the School District is subject to suit under Title VI
24 of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and Title IX of the Education
25 Amendments of 1972, 20 U.S.C. § 1681(a).
26

27 7. The School District is entrusted with the responsibility for creating and
28 maintaining an educational environment that is physically and psychologically safe for

1 students. The School District is also entrusted with the responsibility for making policy and
2 for implementing disciplinary, anti-harassment, and anti-discrimination laws and policies.
3 Further, the School District is also entrusted with the responsibility for enforcing, and
4 ensuring that its subordinates, agents, and employees enforce, such laws and policies by
5 taking prompt remedial action following acts of inappropriate behavior, harassment, or
6 discrimination against students.
7

8 8. The School District failed to make, implement, enforce, and failed to ensure
9 that its subordinates, agents, and employees enforced, the above-described laws and policies
10 or to take necessary and prompt remedial action following knowledge or reports of
11 harassment and discrimination.
12

13 9. This court has jurisdiction over Plaintiff's claims pursuant to
14 28 U.S.C. §§ 1331 and 1343(a)(4) because this action seeks a civil remedy under Title VI of
15 the Civil Rights Act of 1964, 42 U.S.C. § 2000d and Title IX of the Education Amendments
16 of 1972, 20 U.S.C. § 1681. The Court has supplemental jurisdiction over state law claims
17 made herein pursuant to 28 U.S.C. § 1367.
18

19 10. The Court has authority to award costs and attorneys' fees under
20 42 U.S.C. § 1988 and R.C.W. 49.60.030.
21

22 11. On or about August 1, 2008, Plaintiff provided the School District with notice
23 of his tort claims pursuant to R.C.W. 4.96.020.
24

25 12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).
26

27 **III. FACTS**

28 13. Beginning in 2003, when Plaintiff entered the seventh grade at Miller Junior
High School, and until his graduation from Aberdeen High School in June 2009, Plaintiff was

1 repeatedly harassed by other students enrolled in the Aberdeen School District on the basis of
2 race, sex, and perceived sexual orientation. Plaintiff also faced retaliation from students after
3 reporting incidents of harassment to school officials.
4

5 **A. HARASSMENT AT MILLER JUNIOR HIGH SCHOOL**

6 14. As a student at Miller Junior High School, Plaintiff was called derogatory
7 names by other students. Among other incidents, Plaintiff found notes in his backpack and
8 taped to his back, calling him "stupid nigger," "dickass," and "dog."
9

10 15. Other students at Miller Junior High threw food at Plaintiff, stole his school
11 supplies, and spit on his lunch tray.

12 16. In or around April 2004, in the spring of Plaintiff's seventh grade year, three
13 students pushed Plaintiff to the floor in the school hallway and smashed a raw egg on his
14 head. On information and belief, only one of the students was disciplined.
15

16 17. The harassment continued throughout the spring of Plaintiff's seventh grade
17 year. In May and June 2004, an assistant principal at Miller Junior High School wrote to the
18 principal, stating that Plaintiff was continuing to be harassed and asking for ideas on how to
19 help protect Plaintiff.
20

21 18. The School District's Superintendant was aware of the harassment against
22 Plaintiff occurring at Miller Junior High School, but was deliberately indifferent to it and took
23 no steps reasonably calculated to put an end to it.

24 19. When Plaintiff returned to Miller Junior High School in the fall of 2004 for his
25 eighth grade year, the harassment began again. Other students shot rubber bands and other
26 items at him, tripped him in the hallways, threw food at him in the cafeteria, and flung
27 spitballs at him on the bus.
28

1 20. In or around the fall of 2004, Plaintiff found notes in his locker and in his
2 school binder calling him names, including "asshole," "BitchFace!," "shithead,"
3 "dumbfucker," and "fuckass."

4 21. Plaintiff and his parents reported the harassment to the school administrators,
5 but the administrators failed to take steps reasonably calculated to end the harassment.
6

7 22. In or around the fall of 2004, an assistant principal recommended that Plaintiff
8 consider changing his style of dress to avoid further harassment.
9

10 23. Only after Plaintiff's father went to the school board did the School District
11 initiate a formal investigation of the ongoing harassment.

12 24. The School District hired a school insurance professional to conduct the
13 investigation. The investigator concluded that Plaintiff had been harassed but recommended
14 no adjustments to the School District's anti-harassment policies or its implementation of them.
15

16 **B. HARASSMENT AT ABERDEEN HIGH SCHOOL**

17 25. At Aberdeen High School, Plaintiff continued to be subjected to harassment by
18 other students. Plaintiff was called names by other students, including: "nigger," "nappy ho,"
19 "Rusty Dickskinner," "faggot," "gay," "Shake-n-Bake," and "fat ass heifer."
20

21 26. Plaintiff endured harassing comments made by other students enrolled in the
22 School District because of his race, because of his sex, and because he did not fit gender
23 stereotypes for a young man and was perceived to be gay. He endured comments about his
24 physical appearance and his perceived sexual orientation, including: "you got quite a bust
25 going on," "[Plaintiff] enjoys being around boys, watching their dicks fly," and "hey girl,
26 I like my fish squirmy."
27
28

1 27. Plaintiff was physically harassed by other students enrolled in the School
2 District. Students pinched and fondled his chest, spit on his head, and threw things at him.

3 28. In or around the spring or summer of 2007, students enrolled in the School
4 District created a website impersonating and mocking Plaintiff and his perceived sexual
5 orientation, and posted harassing and threatening racist comments on this website.
6 On information and belief, in or around the fall of 2007, students discussed the website on
7 school grounds. Though aware of the harassment and threats on the website, the School
8 District did nothing to prevent or mitigate the continuing harassment on school grounds or the
9 foreseeable retaliation resulting from Plaintiff's reporting of the website, even after receiving
10 notice that the Grays Harbor Superior Court had issued a no contact order against one of the
11 harassers involved who had threatened on the website to lynch Plaintiff.
12

13 29. Plaintiff became the target of retaliatory harassment by other students enrolled
14 in the School District after reporting the website to school authorities.
15

16 30. In or around the fall of 2007 and spring of 2008, Plaintiff was regularly
17 harassed by other students in the hallways and in class at Aberdeen High School.
18

19 31. Plaintiff was called "nigger" and heard students using that word in the
20 hallways and cafeteria in Aberdeen High School.
21

22 32. Confederate flags were regularly visible on Aberdeen High School grounds.
23 A group of students at the high school adopted the name of the "Hick Boys" and displayed the
24 Confederate flags on their vehicles in the school parking lot.
25

26 33. In December 2007, one of Plaintiff's teachers wrote to school administrators,
27 reporting that Plaintiff was being harassed by another student and asking for support for
28 Plaintiff. The School District ignored and was unreasonably and deliberately indifferent to

1 this report of harassment, and failed to take any actions reasonably calculated to end the
2 harassment.

3 34. In or around January 2008, another student modified a photograph to make it
4 appear that Plaintiff was kissing another man. The photograph was posted in the Aberdeen
5 High School locker room, was visible to students and staff, and was transmitted between
6 students at the school through their cell-phones. Though aware of the harassing photograph,
7 the School District did nothing to investigate the incident, impose any discipline on the
8 responsible students, or take any other steps reasonably calculated to end the harassment.
9 On information and belief, the photograph was created using Aberdeen High School
10 computers.

11 35. During his senior year at Aberdeen High School, Plaintiff continued to be
12 subjected to harassment by other students. Other students made mocking comments and
13 gestures, including talking about Plaintiff's "man tits" and mocking his way of walking.

14 **C. PLAINTIFF WAS DISCOURAGED FROM REPORTING HARASSMENT**

15 36. In or around the fall of 2005, near the beginning of Plaintiff's first year at
16 Aberdeen High School, then-assistant principal Rocky Rocquin discouraged Plaintiff from
17 reporting misconduct engaged in by Plaintiff's peers.

18 37. In spite of Rocquin's discouragement, during his years at Aberdeen High
19 School, Plaintiff and his parents repeatedly reported incidents of harassment to School District
20 administrators either verbally or in writing, or both. The School District failed to respond
21 adequately to these complaints. The School District either did not conduct investigations into
22 the reported incidents, did not impose discipline on the students involved in the harassment,
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1 or did not take other steps reasonably designed to put an end to the ongoing harassment of
2 Plaintiff.

3 38. The School District's unreasonable and deliberate indifference to the ongoing
4 harassment created a hostile educational environment.
5

6 **D. THE SCHOOL DISTRICT TREATED HARASSMENT BASED ON PERCEIVED**
7 **SEXUAL ORIENTATION DIFFERENTLY FROM OTHER FORMS OF HARASSMENT**

8 39. During his years at Aberdeen High School, much of the harassment was
9 directed at Plaintiff's sex, perceived sexual orientation, and failure to conform to gender
10 stereotypes.

11 40. The School District failed to equally enforce its anti-harassment and anti-
12 bullying policy when Plaintiff reported incidents involving sexual or perceived sexual
13 orientation harassment.
14

15 41. In or around the fall of 2007 and spring of 2008, when the School District
16 learned of students calling each other "nigger" at Miller Junior High School, the School
17 District acknowledged that use of racial slurs was unacceptable and initiated an investigation
18 in response to complaints about the use of the racial slur. In contrast, the School District
19 failed to even initiate investigation into the harassment of Plaintiff based on his sex and
20 perceived sexual orientation.
21

22 **E. PLAINTIFF SUFFERED INJURY FROM THE HARASSMENT**

23 42. As a result of the School District's unreasonable and deliberate indifference to
24 the ongoing, severe, and persistent harassment, Plaintiff was denied access to an equal
25 educational opportunity. His academic progress was hindered, he was isolated at school, he
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1 felt discouraged from using his locker, and he avoided extra-curricular activities that put him
2 in contact with his peers.

3 43. The School District's intentional, deliberate, and unreasonable failure to take
4 reasonable remedial steps in response to the harassment caused Plaintiff to suffer extreme
5 emotional distress and psychological damage, including but not limited to an inability to
6 concentrate on studies, depression, fear, despair, anger, humiliation, and anxiety, all of which
7 were ongoing hardships. Reporting harassment and discrimination to adults and having the
8 reports ignored or rejected was humiliating and degrading for Plaintiff.
9

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11 44. As a direct, legal, and proximate result of the School District's violations of
12 Plaintiff's statutory rights, Plaintiff has been damaged in an amount to be determined at trial.
13

14 IV. CAUSES OF ACTION

15 First Cause of Action: 16 Violation of Title VI of the Civil Rights Act of 1964

17 45. Plaintiff alleges all the foregoing allegations and incorporates them herein by
18 reference.

19 46. Plaintiff, an African-American, is a member of a protected class.

20 47. The School District receives financial assistance from the United States
21 Department of Education and is therefore subject to suit under Title VI of the Civil Rights
22 Act of 1964, 42 U.S.C. § 2000d et seq. ("Title VI").
23

24 48. The School District violated Title VI by being deliberately indifferent to the
25 maintenance of a racially hostile educational environment.

26 49. Plaintiff has suffered racial harassment that is severe, pervasive, and
27 objectively offensive, resulting in a racially hostile educational environment. As a result,
28

1 Plaintiff has been deprived of access to educational benefits and opportunities provided to
2 other students in violation of Title VI.

3 50. The School District exercised control over students in attendance at its schools
4 as well as the context in which the racially hostile environment was created.

5 51. The School District had actual notice of the racially hostile educational
6 environment. The District had the authority to address it and take corrective action.

7 52. The School District was deliberately indifferent to the known racially hostile
8 educational environment. The School District's clearly unreasonable response deprived
9 Plaintiff of an equal opportunity to access the School District's educational program.

10 53. Plaintiff has suffered damages as a result of the School District's violations of
11 Title VI as set forth above.

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15 **Second Cause of Action:**
16 **Violation of Title IX of the Education Amendments of 1972**

17 54. Plaintiff alleges all the foregoing allegations and incorporates them herein by
18 reference.

19 55. The School District receives financial assistance from the United States
20 Department of Education and is therefore subject to suit under Title IX of the Education
21 Amendments of 1972, 20 U.S.C. § 1681(a) ("Title IX").

22 56. Plaintiff suffered sexual harassment by other students in the School District
23 that was severe, pervasive, and objectively offensive, resulting in a hostile educational
24 environment.
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1 57. The School District exercised substantial control over the students responsible
2 for the sexual harassment of Plaintiff as well as the context in which the harassment took
3 place.
4

5 58. The School District had actual notice of the harassment and had the authority
6 to address the harassment and take corrective action.

7 59. The School District was deliberately indifferent to the sexual harassment.

8 60. As a result of the School District's deliberate indifference, Plaintiff was
9 deprived of access to educational benefits and opportunities provided to other students in
10 violation of Title IX.
11

12 61. Plaintiff has suffered injury as a result of the School District's violations of
13 Title IX as set forth above.
14

15 **Third Cause of Action:**
16 **Violation of Washington Law Against Discrimination - Unlawful**
17 **Discrimination on the Basis of Race, Sex, and Perceived Sexual Orientation**

18 62. Plaintiff alleges all the foregoing allegations and incorporates them herein by
19 reference.

20 63. Plaintiff, an African-American, is a member of a protected class.

21 64. Plaintiff has suffered harm from severe and persistent harassment on the basis
22 of his race, sex, and perceived sexual orientation and from the maintenance of a hostile
23 educational environment.
24

25 65. Incidents of racial, sexual, and sexual orientation harassment at Miller Junior
26 High School and Aberdeen High School were sufficiently severe and pervasive as to create
27 a hostile educational environment.
28

1 66. The School District knew or should have known of the severe and pervasive
2 harassment and hostile educational environment.

3 67. The School District's response to the known harassment and hostile
4 educational environment was neither reasonably prompt nor adequate, and the School
5 District thereby violated the Washington Law Against Discrimination,
6 Chapter 49.60 R.C.W.("WLAD").

7
8 68. All schools and educational facilities operated by a school district are places of
9 public accommodation or assemblage for purposes of WLAD.
10

11 69. A school district's failure or refusal to provide equal education opportunities to
12 children constitutes an unfair and discriminatory practice under WLAD.

13 70. The School District violated WLAD by failing to prevent or put an end to the
14 harassment and hostile educational environment that denied Plaintiff equal opportunity and
15 access to the educational programs and services provided by the School District.
16

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18 **Fourth Cause of Action:**
19 **Negligence – Breach of the School District's Special Duty to Protect Students**
 from Foreseeable or Reasonably Anticipated Dangers or Harm

20 71. Plaintiff alleges all the foregoing allegations and incorporates them herein
21 by reference.

22 72. Schools in Washington have a special duty to protect students in their custody
23 from reasonably anticipated dangers or harms.
24

25 73. The School District breached its special duty to protect Plaintiff from
26 reasonably anticipated or foreseeable dangers or harms by failing to take effective actions or
27 steps to put an end to the hostile educational environment and the severe and pervasive
28

1 harassment of Plaintiff on the basis of his race, sex, and perceived sexual orientation by other
 2 students enrolled in the School District. The School District's failures include failure to
 3 design and implement effective anti-harassment policies and practices, failure to properly and
 4 adequately discipline students who engage in harassment of other students, failure to properly
 5 train staff and employees, failure to properly investigate the claims of Plaintiff and his
 6 parents, and failure to properly supervise staff, employees and students.
 7

8 74. The School District's breach of duty was the proximate cause of actual harm to
 9 Plaintiff.
 10

11 **Fifth Cause of Action:**
 12 **Outrage**

13 75. Plaintiff alleges all the foregoing allegations and incorporates them herein by
 14 reference.
 15

16 76. The School District engaged in extreme and outrageous conduct toward
 17 Plaintiff. The School District intentionally or recklessly inflicted emotional distress upon
 18 Plaintiff. Such conduct by the School District resulted in severe emotional distress to Plaintiff
 19 that manifested in physical problems.
 20

21 **V. PRAYER FOR RELIEF**

22 Plaintiff respectfully prays for judgment as follows:

23 1. An award of compensatory damages and consequential damages to Plaintiff
 24 for harm suffered, opportunities denied, and deprivation of rights in an amount to be proven
 25 at trial;
 26

27 2. An award of Plaintiff's expenses, costs, and reasonable attorneys' fees under
 28 42 U.S.C. § 1988 and any other applicable provision of federal or state law; and

3. Such other and further relief as the Court deems just and proper.

DATED this 7th day of December, 2010.

HILLIS CLARK MARTIN & PETERSON P.S.

By s/ Michael R. Scott

Michael R. Scott, WSBA #12822
Joseph A.G. Sakay, WSBA #24667
Alexander M. Wu, WSBA #40649
Hillis Clark Martin & Peterson, P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789
Email: mrs@hcmp.com; jas@hcmp.com;
amw@hcmp.com

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON
FOUNDATION

Sarah A. Dunne, WSBA #34869
M. Rose Spidell, WSBA #36038
American Civil Liberties Union of Washington
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Telephone: (206) 624-2184
Facsimile: (206) 624-2190
Email: dunne@aclu-wa.org;
spidell@aclu-wa.org

Attorneys for Plaintiff Russell Dickerson III